

APPEAL NO. 031799
FILED AUGUST 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 6, 2003. The hearing officer determined that appellants (claimant beneficiaries), RoB (the decedent's surviving spouse), OB, and ReB (the decedent's sons), are eligible beneficiaries for the payment of death benefits, but that only ReB is entitled to receive death benefits; that ReB is entitled to receive death benefits beginning July 18, 2000, and continuing through January 6, 2003; and that RoB and OB are not entitled to receive death benefits because they failed to file their claim for death benefits within one year of the death of decedent. The claimant beneficiaries appeal, asserting that ReB's death benefits should continue until September 2003; and that RoB and OB had good cause for failing to file their claim within one year of the decedent's death. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The essential facts are not in dispute. The decedent was fatally injured at work on _____. At that time he was the husband of RoB, and the father of OB, ReB, and a daughter who was 20, married, and not attending school. There is no assertion that the daughter is entitled to any death benefits. OB was then 18, and subsequently graduated from high school on June 1, 2001, but did not pursue further education. ReB was then 16, and attended high school until September 19, 2002, when he withdrew from further attendance. He has not returned to full-time student status since then. The family retained an attorney approximately eight days after the decedent's death. The Notice of Fatal Injury or Occupational Disease/Claim for Compensation for Death Benefits (TWCC-42) was sent to the Texas Workers' Compensation Commission (Commission) by the attorney on July 27, 2001, and received by the Commission on July 30, 2001. The hearing officer found that no other claim for the payment of death benefits was filed prior to the claim received on July 30, 2001. Although he did not make a specific finding of fact, the hearing officer noted in his Statement of the Evidence that the attorney did not send a copy of the claim for death benefits to the carrier at the time that the claim was filed with the Commission, but did send a copy to the carrier on September 26, 2001. The parties stipulated that on August 24, 2001, the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) based upon the failure of the potential death benefit recipients to file a claim within one year of the decedent's death.

Section 409.007 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 122.100 (Rule 122.100) require that a claim for death benefits be filed with the Commission not later than the first anniversary of the date the decedent died. Failure to timely file a claim bars the claim unless the potential beneficiary is a minor or incompetent, or good

cause exists for the failure to timely file the claim. The hearing officer determined that the claims of RoB and OB are barred because the claim was not filed within one year of the death of the decedent, and there was no good cause for the failure to timely file the claim. On appeal, the claimant beneficiaries concede that the claim was filed late, but assert that they relied upon their attorney to file the claim, and that this is good cause for not filing the claim for death benefits within one year. The Appeals Panel has held that ignorance of the law does not constitute good cause to excuse an untimely filing. Texas Workers' Compensation Commission Appeal No. 93423, decided July 12, 1993; see also St. Paul Fire and Marine Insurance Company v. Lake Livingston Properties, Incorporated, 546 S.W.2d 404 (Tex. Civ. App.-Beaumont 1977, writ ref'd, n.r.e) which held, as a matter of law, that bad advice from one's attorney as to the time for filing a claim does not constitute good cause. The claimant beneficiaries also assert that the carrier failed to comply with Rule 132.17(d) concerning notice to potential beneficiaries and that this establishes good cause for the untimely filing, however, we note that the claimant beneficiaries received notice that they were potential beneficiaries on July 26, 2000, from the Commission. Under these circumstances, we cannot conclude that the hearing officer abused his discretion in determining that there was no good cause for the failure to timely file the claim. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer correctly determined that the claim of ReB is not similarly barred. ReB was a minor at the time of the decedent's death, and he was still a minor at the time that the claim for death benefits was filed. There is no dispute that he is eligible to receive death benefits; the only dispute is the duration of the benefits. We previously addressed this question in Texas Workers' Compensation Commission Appeal No. 011542-s, decided August 23, 2001. We said:

Section 408.183, which addresses the duration of death benefits, provides in Subsection (d) that a child who is eligible for death benefits because, on the date of the employee's death the child is enrolled as a full-time student in an accredited educational institution is entitled to receive or to continue to receive benefits until the date the child ceases, for a second consecutive semester, to be enrolled as a full-time student in an accredited educational institution. [Rule citations omitted.]

CR testified that she was born on March 25, 1981; that on the date her father died she was 18 years of age and a junior in high school; and that she graduated from high school on May 24, 2000. She further stated that she "enrolled" at a college as a part-time student for the Fall 2000 and Spring 2001 semesters but failed to complete the second part of a school test required before she could attend classes and that she had not attended any college classes and has been working as a cashier.

The hearing officer found that on the date of the decedent's death, CR was 18 years of age and was enrolled as a full-time student in an accredited educational institution and that the date she ceased for the second consecutive semester to be enrolled as a full-time student was

January 16, 2001. The hearing officer explained the latter date, stating that most classes begin mid-month. The hearing officer's determinations concerning CR's status as a beneficiary are sufficiently supported by the evidence. She was 18 and a full-time high school student when her father died. She "enrolled" as only a part-time student at the college but never attended a class and so the beginning of the Spring 2001 semester was the date she ceased for the second consecutive semester to be enrolled as a full-time student.

The instant case is similar. The hearing officer's application of this statutory provision to ReB's circumstances is in accord with our decision in Appeal No. 011542-s and the evidence. ReB withdrew from school on September 19, 2002. He ceased to be enrolled as a full-time student for that semester, and when he did not return to school the following semester, he ceased for the second consecutive semester to be enrolled as a full-time student. While ReB asserts entitlement through the time that a second consecutive semester would have ended and a third consecutive semester would start, the hearing officer correctly applied our precedent and determined that ReB ceased to be entitled to death benefits on January 6, 2003, the date the hearing officer calculated as the beginning date of the "second consecutive semester."

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge